IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.911 OF 1987

1. Meesam Haider Abdul Hussein
2. Raees Mehboob Rehman
All are of Bombay, Indian
Inhabitant at present in
Thane Central Jail, Maharashtra. ...Appellants

V/s

State of Maharashtra ...Respondent.

Mr. K.M. Sangani for the appellants.

Mr. D.P. Adsule, APP for the respondent - State.

CORAM: V.M. KANADE, J.
DATE : 24.01.2005

ORAL JUDGMENT:

1. Appellants are challenging the Judgment and Order passed by the Court of Sessions for Greater Bombay. By the said Judgment and Order, the Trial Court convicted the appellants for having committed an offence under section 392 read with section 34 of the Indian Penal Code and sentenced them to undergo R.I. for 7 years and 8 years respectively. Appellant No.1 is the original accused No.1. Appellant No.2 is the original accused No.2. Original accused No.2 i.e. appellant No.2 herein died in encounter as per the report of the City Sessions Court, Bombay vide OW No.17029/04 dated 23/6/2004. The appeal, therefore, abets so far as appellant No.2 is concerned.

2. Prosecution case is that the appellant along with others committed robbery on 28/7/1983 at 10.15 p.m. at the junction of St. Domnic Road and Manual Gonsalves Road, Bandra and used deadly weapons while committing the said act. Charge-sheet was filed against the accused. The Trial Court convicted the accused under sections 392, 394, 397 read with section 34 of the Indian Penal Code. Prosecution examined in all 7 witnesses. P.W.1 - Agnelo Parera has stated in his evidence that he used to take private tuitions and had gone to the residence of one student at Ambedkar Road, Bandra on 20/7/1983. After he had finished giving tuitions to his students, he went to the house of his friend Puri and, thereafter, when he was returning home from Pali Road at about 7.45 p.m. and, while he was walking on the said road, four persons came near him and surrounded him. They were carrying knives which looked like choppers. One person stood in front of him and other three stood behind him. The person who was standing in front of him demanded all his belongings. He, therefore, removed his watch and gold ring. He also handed over his brief case and the money purse. According to this witness, one of the culprits gave a blow of chopper on his finger. The accused, thereafter, ran away. He, thereafter, went

to the Bhabha Hospital where he was given medical aid and from there he went to Bandra Police Station and lodged a complaint. Thereafter, on 6/12/1983, he was called at Azad Maidan Police Station for identification parade and he identified accused No.3 as the person who had taken away his wrist watch, accused No.2 as the person who had taken is money purse, accused No.1 as the person who had assaulted him on his finger with chopper and accused No.4 as the person who had assaulted him near his elbow on his left hand with a chopper. Thereafter, he was again called on 22/12/1983 to identify the stolen property. He identified his wrist watch. In his cross-examination, he has stated that he had never said that he was shown wrist watch of "Omax make Quartz electronic" in his further statement on 22/12/1983. The said portion was shown to him. He has further admitted that he has not read his further statement dated 22/12/1983 after it was recorded by the Police. So far as the identification parade is concerned, he has stated in his cross-examination that he identified four accused in the identification parade. P.W. 2 Shriniwas Achari was a panch examined for the recovery of the watch. P.W. 3 - Gulam Shaikh was a panch who signed the Panchanama dated 21/7/1983 where the police seized one black comb and prepared

the panchanama of the place of the offence. P.W. 4 - Dr. Dipak Sharma was attached to Bhabha Hospital and he examined the complainant when he was brought to the hospital and found that there were four contused lacerated wounds on the left thumb, left middle finger, left ring finger and on the left elbow. P.W.5 - Prabhakar Dixit was attached to Bandra Police Station as Sub-Inspector. He recorded the FIR. He admitted in his cross-examination that in the panchanama of the scene of offence, the description about the type of lights on the street below pole was not mentioned. Similarly, the distance between the spot where the complainant was assaulted and robbed and the electric light poles also was not mentioned. Similarly, the distance between the two electric lamp poles was not mentioned. P.W.6 - Raviraj Sherigar acted as a panch at Azad Maidan Police Station in the identification parade. P.W. 7 - Khemsing Jadhav was the P.S.I. attached to the Bandra Police Station who had carried the investigation.

3. In my view the prosecution has miserably failed to follow the principles incorporated in the Bombay High Court Criminal Manual issued by the Bombay High Court. It is stated in clause 2(h) that the suspects should be placed among persons if practicable eight or more

who are as far as possible of the same age, height, general appearance (including standard and dress and grooming) position in life. In the present case, all the four accused were kept in one identification parade among 42 dummies. The accused themselves were dissimilar in respect of appearance and other respects. Further, in the Bombay High Court Manual in clause 2(i), it is laid down that more than two suspects should not be paraded together and in such cases there should be more than one parade. In this case, only one parade was held on 6/12/1983 and the three accused having different complexions, heights etc. were paraded in one identification parade. Further, the Special Executive Magistrate has not indicated whether the identifying witness had touched the persons and identified them. Apart from these discrepancies in holding the identification parade, the parade itself was held in the cabin of Senior Inspector of Police, Azad Maidan Police Station which fact has been recorded in the further statement of P.W.1 on 6/12/1983. Thus, it is difficult to rely on the test identification parade. P.W.1 even otherwise could not have seen the accused at the time of the incident as the panch witness in his spot panchanama has not stated whether there was any light at the scene of offence. He has not stated the distance

between the two electric poles. The incident in question took place at 10.15 p.m. during the monsoon season when there were heavy rains. Thus even otherwise it is difficult to believe that P.W.1 could have seen the assailants.

4. The recovery and identification of the watch by P.W.1 also becomes doubtful particularly when he has admitted that after the panchanama was drawn, it was not read over to him by the Police. Thus, in my view, the prosecution has not proved beyond the reasonable doubt that the accused had committed the said offence. The benefit of doubt will have to be given to the accused. Accordingly, the following order is passed:-

O R D E R

. Accused are acquitted of the offence with which they are charged. Appeal is allowed. Bail bonds of the accused to stand cancelled.

V.M. KANADE, J.